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NOTIFICATIONS BY GOVERNMENT

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TELANGANA STATE LEGISLATIVE COUNCIL

BEFORE THE HON'BLE CHAIRMAN

TELANGANA STATE LEGISLATIVE COUNCIL

AT : HYDERABAD

Wednesday, the 16th January, 2019

Present: Sri K. Swamy Goud, Hon'ble Chairman

Disqualification Petition No. 4 of 2018

Between:-

1. Sri Palla Rajeshwar Reddy, M.L.C.
Government Whip,
Telangana Legislative Council,
H.No. 8-2-293/82/Ng/32,
Nandagiri Hills, Jubilee Hills,
Hyderabad.
2. Sri Bodakunti Venkateswarlu, M.L.C.
Government Whip,
Telangana Legislative Council,
Flat No. 179, Road No.10 C,
MPs' & MLAs' Colony,
Gayatri Hills, Hyderabad.

...Petitioners

AND

Sri Sabavat Ramulu Naik, M.L.C.,
H.No. 8-4-325/4/10,
Banjara Nagar, Erragadda,
Hyderabad.

...Respondent

This petition having come up for hearing before me and after hearing the arguments of Sri P. Mohith Rao, Advocate representing the Petitioners and Sri J. Srinivas, Advocate, representing the Respondent, I pass the following:

ORDER

1. Sri Palla Rajeshwar Reddy, Member of Telangana Legislative Council, Government Whip and a Member and Leader of Telangana Rashtra Samithi Party and another (herein after called "the Petitioners") filed a petition before me on 17.12.2018 under Article 191 r/w Paragraph 2 (1) (a), sub-para (3) of that para of the Tenth Schedule to the Constitution of India and Rule 6 of the Telangana Legislative Council (Disqualification on Ground of Defection) Rules, (herein after called "the rules") praying that Sri Sabavat Ramulu Naik, Member of Legislative Council (herein after called "the respondent") be disqualified under the Tenth Schedule to the Constitution and his seat be declared vacant in the Telangana Legislative Council.

2. In the petition, the petitioners averred that the respondent, after having been nominated by the Governor to the Telangana Legislative Council, indulged in anti party activities in as much as he met the President of Indian National Congress Party and joined the said party on 27.10.2018 and also canvassed on behalf of the Indian National Congress Party in the pre elections conducted to the Telangana State Legislative Assembly held on 7.12.2018, on account of the Assembly being dissolved on 6.9.2018. In support of the contentions of the petitioners, they had Annexed several newspaper clippings along with photographs published therein and also news bulletins telecast in TV Channels in this regard in various electronic media channels; and contended that the respondent incurred disqualification on ground of defection as the respondent being a nominated as member of the Legislative Council joined another political party (Indian National Congress) after the expiry of 6 months from

the date on which he has taken the seat after complying with the requirements of Article 188 of the Constitution and therefore prayed that the respondent be disqualified under the provisions of Tenth Schedule to the Constitution of India.

3. I have perused the averments in the petition and the annexed newspaper clippings, media reports and videos; having satisfied myself that the petition complies with the requirements of Rule 6 of the Rules and in terms of sub-rule (3) of Rule 7 of the Rules, on 18.12.2018, caused a copy of the petition along with all Annexures thereto be forwarded to the respondent, in relation to whom the petition has been made, with a request to furnish his comments thereon, in writing within 7 days of the receipt of the same. In response thereto, the respondent vide letter dt. 24.12.2018 sought time for 4 weeks for submitting his comments on the said petition; considering the request he was granted one week further time vide letter dt. 28.12.2018 up to 3.1.2019, as the sub-rule (3) of Rule 7 of the Rules, *Inter alia* lays down that a Member, in relation to whom the petition has been made, shall, within 7 days of the receipt of copy of the petition or such further period as the Chairman may have sufficient cause to allow, forward his comments in writing thereon to the Chairman; However, the respondent had not chosen to file any of his comments by 3.1.2019; on 4.1.2019, a further notice was sent to the Respondent as well as the petitioners requesting them to appear personally on 11.1.2019 at 11.30 AM to present their case; the Counsel for the Petitioners attended the hearing on 11.01.2019, whereas the respondent neither filed any comments nor appeared personally. However, he was represented through his counsel, namely Sri J. Srinivas. Sri P. Mohith Rao and Sri J. Srinivas Learned Counsels, appearing for the petitioners and respondent respectively, reported ready for hearing.

Heard both sides.

Submissions on behalf of the petitioners:

4. The contention of the petitioners is that "the petitioners are the Members of Telangana Rashtra Samithi (herein after TRS) which is a "Legislature Party" in the Telangana State Legislative Council and the respondent herein is a member of the TRS party; the respondent herein was nominated by the TRS party for being a member to the Telangana State Legislative Council. It is pertinent to mention here that the respondent herein was a member of TRS party on the date of his

nomination to the Legislative Council by the Governor. Therefore, as per the explanation to para 2(1) (a) and sub-para (3) of X Schedule to the Constitution, the respondent herein be deemed to belong to TRS party in as much as he was a Member of TRS party on the date of his nomination to the Legislative Council, by the Governor".

5. It is further submitted on behalf of the petitioners that "TRS was formed as a Political Party on 27.4.2001 with the stated objectives to have the Geographical area of the present State of Telangana formed into a separate state. On account of serious agitations for separation of Telangana Region from the State of Andhra Pradesh, the Parliament passed the Andhra Pradesh Re-organisation Act, 2014 (Act 29 of 2014) creating a new State i.e. State of Telangana with an appointed date of 2nd June, 2014 with 10 Districts. After the Re-organisation Act was passed and/but prior to the appointed date, the General Elections were conducted and by that time the TRS party was registered as a Political Party, and had a common election symbol of "CAR" for all the contestants who were nominated as members in respective Assembly Constituencies in the said elections".

6. It is contended that the respondent herein on 27.10.2018 went to Delhi and joined Indian National Congress Party in the presence of its President Sri Rahul Gandhi; his joining Indian National Congress is reported in all the leading Newspapers along with Photographs such as Eenadu, The Hindu, Andhra Bhoomi, Deccan Chronicle, The Hans India, Andhra Jyothi etc.. and was also telecast in Electronic Media such as NTV, ETV, TV9, TV5, ABN Andhra Jyothi TV, Sakshi TV, etc; and also canvassed for Indian National Congress Party in the Assembly elections that were conducted on 7.12.2018.

7. It is vehemently contended on behalf of the petitioners that the respondent herein has conclusively by his acts and conduct, "voluntarily" given up his Membership of TRS Party within the meaning of the said expression in para 2(1) (a) and sub-para (3) of the X Schedule to the Constitution.

8. It is further contended that the action on the part of the respondent amounts to "voluntarily giving up his Membership of such political party" the term such political party meaning the TRS on whose nomination the respondent has become a

Member of Legislative Council of the State of Telangana, nominated by the Governor, within the meaning of said expression occurring in Para 2 (1) (a) r/w sub-para 3 of that para of the X Schedule to the Constitution of India and explanation provided to sub Para 1 of Para 2 of X Schedule to the Constitution of India. And the conduct of the respondent visits that the Constitutional bar of disqualification to continue as a Member of the Legislative Council, on account of defection suffered, as mandated under para 2 (1) (a) and Sub-para (3) of that para of the Tenth Schedule to the Constitution of India. The Learned Counsel for the petitioners also placed reliance on authoritative pronouncements of the Supreme Court in Rajendra Singh Rana and others Vs. Swamy Prasad Mourya and others, Dr. Maha Chandra Singh Vs. Chairman, Bihar Legislative Council, Kihoto Hollohan Vs. Zachillhu etc., Ravi S Naik Vs Union of India and others , G.Vishwanathan Vs Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, Konda Muralidhar Rao Vs Dr.A. Chakrapani and 3 others, Speaker, Orissa Legislative Assembly Vs Utkal Keshari Parida.

Submissions on behalf of the Respondent:

9. Learned Counsel, appearing on behalf of the Respondent, vehemently contended that the petition is not maintainable as the same is wholly based on certain paper clippings , media reports and videos. He further contended that the respondent being a nominated member by the Governor cannot be disqualified either under Article 191 or under the provisions of tenth schedule and the Rules made thereunder.

10. Except contending the above two grounds for dismissal of the petition, no material/judgment is placed on record to substantiate the said contention.

Consideration by the Tribunal:

11. The main contention of the petitioners is that the respondent was a Member belonging to Telangana Rashtra Samithi Party as on the date of his nomination to the Legislative Council by the Governor in exercise of the powers conferred by sub clause (e) of Clause (3) of Article 171 of Constitution of India, r/w Clause 5 of that Article, is not disputed during the course of the hearing by the respondent; the respondent having received the petition along with all Annexures did not choose to file his comments on the petition. Therefore, in the absence of a contra pleading or oral

submission, it can be safely concluded that it is an admitted fact that the respondent was a Member of Telangana Rashtra Samithi party as on the date of his nomination to the Council by the Governor and be deemed to belong to TRS political party.

12. The petitioners had relied mainly on newspaper clippings and video recordings which appear on various TV channels as proof of the anti party activities of the respondent and is having voluntarily given up Membership of the TRS party; the respondent has objected to the use of newspaper clippings and video recordings as evidence by the petitioners contending that newspaper articles cannot be relied upon as evidence in the absence of any corroborative material. However, in the instant case, I see no reason as to why so many newspapers and media channels would publish /report something wrongly and if that was so, then the least that was expected from the respondent was to forthwith deny the same and issue clarification / explanation in that regard. Many leading national and regional /state newspapers and media channels did in fact report about the respondent joining the Indian National Congress party in the presence of Sri Rahul Gandhi. I have seen the video records; video recording thus provide ample and irrefutable proof that the respondent had indeed joined Indian National Congress Party and instead of categorically denying or refuting the allegations appearing in the newspaper clippings, media reports, he has himself admitted through his counsel during the course of oral arguments that he had met Sri Rahul Gandhi at Delhi and joined Indian National Congress Party but he cannot be disqualified either under Article 191 or under the provisions of the tenth Schedule and the Rules made thereunder, since he is a nominated member by the Governor therefore the defection laws would not apply to him. I have examined the said submission in the light of the provisions of tenth schedule to the Constitution of India and there is no such safeguard, as contended, provided under tenth schedule and on the other hand para 2 (1) (a) and (b) (i) and (ii), r/w sub para 3 of that para makes it very clear that the nominated member of a House shall also incur disqualification on ground of defection under tenth schedule; the issue on hand, when examined it fit into para 2 (1) (a), r/w sub-para 3 of that para of Tenth Schedule which reads as under:

"2. Disqualification on ground of defection.—(1) Subject to the provisions of [paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) x x x x x

Explanation—For the purposes of this sub-paragraph,—

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(b) a nominated member of a House shall,—

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) x x x x x

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) x x x x x

Therefore, the above contention of the respondent is rejected.

13. Paragraph 2 (1) (a) of the Tenth Schedule states that 'a member of a House belonging to a political party shall be disqualified for being a member of the House, if he has voluntarily given up his membership of such political party'. The term 'voluntarily given up membership' has been amply clarified by the Supreme Court in its judgment, dated the 9th February, 1994, in *Ravi Naik Vs Union of India* [1994 AIR 1558, 1994 SCR (1), 754, 1994 SCC Supl. (2) 641, JT 1994 (1) 551, 1994 SCALE (1) 487], wherein the Court had *inter alia* observed as follows:-

"The words 'voluntarily given up his membership' are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from the member an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

In the same case, the Supreme Court had upheld the decision of the Speaker of the Goa Legislative Assembly disqualifying two MLAs, who were elected on the ticket of the Maharashtra Gomantak Party (MGP), on the conduct alone of their accompanying the Leader of the Congress (I) Legislature Party in Goa, when he met the Governor to show that he had the support of twenty MLAs.

14. The Supreme Court in its orders, dated the 24th of January, 1996, in *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Another* [1996 AIR 1050, 1996 SCC (2) 353, JT 1996 (1) 607, 1996 SCALE (1) 531], had also *inter alia* observed as follows:

"The act of voluntarily giving up the membership of the political party may be either express or implied."

15. In view of such authoritative pronouncements by the Hon'ble Supreme Court, while deciding the petition in which the allegation is of the violation of paragraph 2 (1) (a) of the Tenth Schedule, the role of the Chairman, as the designated authority, is only in the domain of ascertaining the facts and once the facts are gathered or placed to show some action, express or implied, within the meaning of paragraph 2 (1) (a) of the Tenth Schedule, to take a decision in the matter. The limited role which a Presiding Officer has to perform under the above-cited paragraph of the Tenth Schedule has been amply clarified by the Supreme Court in *Dr. Mahachandra Prasad Singh Vs. Chairman, Bihar Legislative Council & Ors* [(2004) 8 SCC 747], wherein, it had observed as under:-

"It may be noticed that the nature and degree of inquiry required to be conducted for various contingencies contemplated by paragraph 2 of the Tenth Schedule may be different. So far as clause (a) of paragraph 2 (1) is concerned, the inquiry would be a limited one, namely, as to whether a member of the House belonging to any political party has voluntarily given up his membership of such political party."

16. As such, it now remains for me to decide, whether expressly or by impliedly, the Respondent has voluntarily given up the membership of his political party, *namely*, TRS Party. From the actions of the Respondent based on the material/evidence presented before me, it can be inferred that he has voluntarily given up his membership of Telangana Rashtra Samithi Party.

17. After taking into account the facts of the case, the oral submissions made by the counsel for respondent during the personal hearing on 11.1.2019 and the judgments of the Hon'ble Supreme Court, which were cited by the Counsel for Petitioners particularly the observations of the Hon'ble Supreme Court in Ravi S Naik Vs Union of India and similar anti-defection cases, it is crystal clear that the respondent, namely, Sri Sabavat Ramulu Naik by his conduct and action has voluntarily given up his membership to the political party, viz., TRS Party to which he was a member as on the date of his nomination to Telangana Legislative Council by the Governor.

18. Therefore, I hold that the respondent, Sri Sabavat Ramulu Naik has incurred disqualification for being a Member of the Telangana Legislative Council, in terms of para 2 (1) (a) and sub para 3 of that para of the tenth schedule to the Constitution of India. He has thus ceased to be a Member of the Telangana Legislative Council with immediate effect. I decide and declare accordingly.

K. SWAMY GOUD,

Chairman,

Telangana Legislative Council.

Hyderabad,
16-01-2019.

V. NARASIMHA CHARYULU,

Secretary to State Legislature.

EXHIBITS MARKED

Sl. No	Exhibit	Date	Description of the Document
01	EXP1	20.6.2014	Gazette Notification Issued in Part-V regarding Nominating of Members by the Governor to the Telangana Legislative Council.
02	EXP2	23.10.2018	Copy of the Newspaper item published in Eenadu Newspaper.
03	EXP3	28.10.2018	Copy of the Newspaper item published in Andhra Prabha Newspaper.
04	EXP4	28.10.2018	Copy of the Newspaper item published in Andhra Jyothi Newspaper.
05	EXP5	28.10.2018	Copy of the Newspaper item published in Andhra Bhoomi Newspaper.
06	EXP6	28.10.2018	Copy of the Newspaper item published in Nava Telangana Newspaper.
07	EXP7	28.10.2018	Copy of the Newspaper item published in Saakshi Newspaper.
08	EXP8	27.10.2018	Copy of the Newspaper item published in Saakshi Newspaper.
09	EXP9	28.10.2018	Copy of the Newspaper item published in Vaartha Newspaper.
10	EXP10	27.10.2018	Copy of the Newspaper item published in Mana Telangana Newspaper.
11	EXP11	17.10.2018	Copy of the Newspaper item published in Nava Telangana Newspaper.
12	EXP12		CD relating to Paper Clippings.
13	EXP13		CD relating to Videographs.

K. SWAMY GOUD,*Chairman,
Telangana Legislative Council.*Hyderabad,
16-01-2019.**V. NARASIMHA CHARYULU,***Secretary to State Legislature.*

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